the interference. But in the first place, it is impossible to find any actual misrepresentation, and furthermore, since a license to do something on the land of the licensor[14] or licensee,[15] which tends to create an easement in favor of the tenement of the latter, is revocable even after it has been acted upon, it would seem that a license to interfere with an easement should be no less revocable. But whether or not the licensor is estopped from asserting his right in the latter case, it is difficult to see how the estoppel could be extended to a purchaser of the record title, whether with or without notice, since a license is personal merely, and does not run with the land.[16] It would therefore seem that while an easement may be suspended by license, it is not thus terminated; and on transfer of the land or, it is submitted, on destruction of the particular improvement, the right should again become enforceable, for the contrary doctrine leads to the untenable position that, under the fiction of an estoppel, the release of an interest in land is effected by parol in contravention of the Statute of Frauds.[17] The difficulty often found by the courts in applying the doctrine of abandonment is illustrated in the recent case of *Blenis* v. *Utica Knitting Co.* (1911) 130 N. Y. Supp. 740. The defendant, with the knowledge of the plaintiff, having built upon land over which the latter had a right of way, it was decided that since there was not sufficient proof of an intention to abandon and since the defendant had not been led by the plaintiff to treat the servient estate as free from the servitude, the erection constituted a nuisance. While the correct result seems to have been reached, the statement by the court[18] that "Such easement cannot be lost by mere nonuser for any length of time, but it may be extinguished by abandonment and nonuser for a period of twenty years, under circumstances showing an intention to surrender the easement," would indicate a failure to grasp clearly the principles upon which, it is submitted, the conclusion should have been based.

CONTRACTS OF FOREIGN CORPORATIONS MADE BEFORE COMPLIANCE WITH LOCAL STATUTORY CONDITIONS.—Though a corporation's legal existence, like the legislation that gives it birth, is bounded by the frontier of the State of its creation,[1] yet, in the absence of legislation, the common law principle of comity,[2] a contract of the foreign corporation would be secure.[3] All of our States, however, with the

[14]Minneapolis Mill Co. *v.* Minn. & St. Louis Ry. Co. (1892) 51 Minn. 304; Fentiman *v.* Smith (1803) 4 East 107; *contra,* Buchanan *v.* Logansport etc. R. Co. (1880) 71 Ind. 265.

[15]Bridges *v.* Purcell (N. C. 1836) 1 Dev. & Batt. 492; *contra,* Morse *v.* Copeland (Mass. 1854) 2 Gray 302.

[16]Minneapolis & W. Ry. Co. *v.* Minn. & St. Louis Ry. Co. (1894) 58 Minn. 128; see Roffey *v.* Henderson (1851) 17 Q. B. 574.

[17]See Miller *v.* Auburn & Syracuse R. R. Co. (N. Y. 1843) 6 Hill 61.

[18]p. 745.

[1]Bank of Augusta *v.* Earle (1839) 13 Pet. 519.

[2]Story, Conflict of Laws, 38.

[3]Beyond the home State, the corporation's acts are valid or void as legislation or public policy may determine, Waters-Pierce Oil Co. *v.* Texas (1899) 177 U. S. 28; Cowell *v.* Springs Co. (1879) 100 U. S. 55, for a State can either admit conditionally or entirely exclude the corporation, since it is not a "citizen" within the "privileges and immunities" clause of

purpose of protecting their citizens[4] and procuring means of service of process against the intruder,[5] have found it necessary to impose conditions on the doing of business by corporations chartered abroad. What amounts to "doing business"[6] has received much judicial attention. It is usually said that one single act[7] will not satisfy the definition; but such a rule should be limited to the case of a casual and incidental transaction, for where the act is designed to be followed by a series, the fact that it happens to be the first should not exempt it.[8]

After compliance, of course, the foreign corporation's contract is unimpeachable; but if a corporation invade a State and "do business" without first having met the statutory conditions of entrance, the status of the contract, made under such circumstances, is a question as to which the courts are not in harmony. The statutes themselves are indeed substantially different,[9] but apart from that there is judicial conflict, due not only to the usual disagreement in interpreting similar statutes, but perhaps also to the varying attitudes of the several sections of the country towards the general problem of corporations. Most of the States have affixed a penalty on corporations for doing business while in default on the entrance conditions, without specifically declaring transactions in the interim either void or voidable; and under these statutes it has been held that the penalty was intended to be the exclusive punishment[10] and that a contract made before compliance can be sued on by the corporation.[11] This view, though commended by the text-writers,[12] seems open to criticism, for the affixing of the penalty, far from operating to remove the prohibition of the statute, has in other cases, in the absence of such a prohibition, been

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the constitution, Paul *v.* Virginia (1868) 8 Wall. 168, though a "person" within the "equal protection of the laws" provision. Pembina Mining Co. *v.* Pennsylvania (1887) 125 U. S. 181. Of course contract obligations may not be impaired, Erie R. R. *v.* Pennsylvania (1893) 153 U. S. 628, nor interstate commerce affected. Cooper Mfg. Co. *v.* Ferguson (1885) 113 U. S. 727.

The holding in Paul *v.* Virginia *supra* that a contract of insurance is not interstate commerce gives rise to the frequency of insurance cases in discussions like the present.

[4]See cases cited in note 24.

[5]Morawetz, Private Corporations, § 665.

[6]For an enumeration of the decisions defining what constitutes "doing business," see Beale, Foreign Corporations, chap. VIII.

[7]Cooper Mfg. Co. *v.* Ferguson *supra.*

[8]Plow Co. *v.* Wyland (1904) 69 Kan. 255.

[9]See the various statutes collected and compared in Beale, Foreign Corporations, chap. VII.

[10]Sherwood *v.* Alvis (1887) 83 Ala. 115; see also Fritts *v.* Palmer (1889) 132 U. S. 282; but see *id.* dissenting opinion, 293; Union Life Insurance Co. *v.* McMillen (1873) 24 Oh. St. 67; Kindel *v.* Lithographing Co. (1893) 19 Colo. 310.

[11]Garratt Ford Co. *v.* Vermont Mfg. Co. (1897) 20 R. I. 187; State *v.* Book Co. (1904) 69 Kan. 1; Jarvis-Conklin Mortgage Trust Co. *v.* Willhoit (1897) 84 Fed. 514, arguing that the statute was not for the benefit of particular individuals but in the interest of the State alone. In Washington, the citizen-defendant is estopped. La France Fire Engine Co. *v.* Town of Mt. Vernon (1894) 9 Wash. 142.

[12]2 Morawetz, Private Corporations, § 665; 6 Thompson, Corporations, § 7957.

held to raise one.[13] The holding under criticism has often been emphatically rejected,[14] sometimes on the ground that the legislature intended to invalidate the contract and thus affix a double penalty on noncompliance,[15] but oftener by the sounder argument that the corporation, in order to recover, must plead the very act which is prohibited.[16] It seems needless to discuss the policy of the law when it is distinctly enunciated by a statutory prohibition.[17] However, if the presence of the penalty is to affect the status of the contract, it must be on the doubtful ground that it alone is sufficient to achieve the purpose of the legislation, which is the protection of the domestic citizen; but it is manifest that a mere penalty would be quite inadequate, for its collection by the State would not for instance help a citizen who had contracted with an irresponsible insurance company. When the statute affixes no penalty for violation of its conditions, it would seem *a fortiori* that the corporation could not recover on a contract made before compliance. Otherwise, the statute would be agreeably innocuous to the object of its restraint.[18]

In other States, the statute avoids the difficulty by expressly declaring that no action shall be maintainable on the contract. Here, future compliance[19] will remove the bar to recovery, and accordingly the domestic defendant in alleging non-compliance by the corporation is pleading in abatement.[20] Still other statutes in terms provide that the contracts shall be void.[21] Here, then, the corporation is clearly without remedy, even though it afterwards meet the conditions for doing business. It would seem preferable, however, to call the contract permanently unenforcible by the corporation rather than void, since the domestic party to the contract should undoubtedly recover. This side of the question is raised in the recent case of *Central Coal and Coke Co.* v. *Optimo Lead and Zinc Co.* (Mo. 1911) 139 S. W. 525, where it was held that the domestic party can recover against the foreign corporation, since the citizen, in contracting, had a right to assume that the foreign corporation had complied with the law; while it is estopped from pleading its own wrong.[22] The court felt that

[13]Bensley *v.* Bignold (1822) 5 B. & Ald. 335; Gregory *v.* Wilson (1873) 36 N. J. L. 315; Pennypacker *v.* Capital Insurance Co. (1890) 80 Ia. 56; see Wald's Pollock, Contracts, 399.

[14]Cincinnati etc. Co. *v.* Rosenthal (1870) 55 Ill. 85; Thorne *v.* Travelers' Ins. Co. (1875) 80 Pa. 15; Aetna Ins. Co. *v.* Harvey (1860) 11 Wis. 412; New York etc. Ass'n *v.* Cannon (1897) 99 Tenn. 344.

[15]Cincinnati etc. Co. *v.* Rosenthal *supra.*

[16]Dudley *v.* Collier (1888) 87 Ala. 431, apparently rejecting the doctrine of Sherwood *v.* Alvis *supra;* Delaware etc. Co. *v.* Bethlehem etc. Co. (1902) 53 Atl. 533; see also cases cited in note 14; and *cf.* Langton *v.* Hughes (1813) 1 Maule & Selw. 593; Melchior *v.* McCarty (1872) 31 Wis. 252.

[17]See *Ex parte* Neilson (1854) 3 De G. M. & G. 556.

[18]British Columbia Bank *v.* Page (1877) 6 Ore. 431.

[19]Simplex Dairy Co. *v.* Cole (1898) 86 Fed. 739; *contra,* Heileman Brewing Co. *v.* Peimeisl (1901) 85 Minn. 121.

[20]Wood Mowing Machine Co. *v.* Caldwell (1876) 54 Ind. 270.

[21]Ashland Lumber Co. *v.* Detroit Salt Co. (1902) 114 Wis. 66; Oakland etc. Co. *v.* Wolf Co. (1902) 118 Fed. 239.

[22]Berry *v.* Knight Templars' etc. Co. (1891) 46 Fed. 439; Marshall *v.* Reading Fire Ins. Co. (N. Y. 1894) 78 Hun 83.

logically a void contract is of course a nullity,[23] but it unhesitatingly declared that nevertheless the citizen could recover, since the very purpose of the statute is to put him in the advantageous position of being able to sue while protected against suit.[24] This is the result generally reached, and unquestionably it only works clear justice. The confusion in the cases is due to the undiscriminating use of the words "void" and "voidable"; but the thread of correct theory running through the maze is that where the statute prohibits the doing of business the contract, unless specially saved, is unenforcible by the corporation, with or without accompanying penalty, but enforcible by the citizen, the legislation being preferential in his favor. Thus the intent of the statute, gathered from its four corners, shows a voidable and not a void contract as the answer to our inquiry.

[23]See Holmes J. in Chase's Elevator Co. *v.* Boston Tow Boat Co. (1890) 152 Mass. 428.

[24]Pennypacker *v.* Capital Ins. Co. *supra;* Watertown Fire Ins. Co. *v.* Rust (1892) 141 Ill. 85; Marshall *v.* Reading Fire Ins. Co. *supra;* Union Life Ins. Co. *v.* McMillen *supra.*